

4 Am. Jur. 2d Amicus Curiae Summary

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae

Marie K. Pesando, J.D.

[Correlation Table](#)

Summary

Scope:

This article generally discusses persons or bodies appointed or granted leave to appear as amicus curiae in court proceedings. Included in the discussion are the nature and definition of an amicus curiae, the appointment and appearance, and the rights, powers, and duties of, an amicus curiae.

Federal Aspects:

This article discusses federal statutes dealing with appearance as amicus curiae by Senate Legal Counsel and independent counsel as amicus curiae, and discusses United States Supreme Court Rules and Federal Courts of Appeals Rules pertaining to the brief of an amicus curiae and oral argument by counsel for an amicus curiae.

Treated Elsewhere:

Antitrust actions, court's authorization of participation in proceedings before court, pertaining to, by interested persons or agencies by appearance amicus curiae, see [Am. Jur. 2d, Monopolies and Restraints of Trade § 552](#)

Board of Immigration Appeals' authority to grant permission to attorney or organization represented by attorney to appear on case-by-case basis as amicus curiae if the public interest will be served thereby, see [Am. Jur. 2d, Aliens and Citizens §§ 147, 195](#)

Constitutional question, amicus curiae as unable to raise, and court as unable to consider such question as raised only by amicus curiae, see [Am. Jur. 2d, Constitutional Law § 157](#)

Declaration of Taking Act, government as having no interest in, and as standing in role of amicus curiae as to, distribution of compensation fund under, see [Am. Jur. 2d, Eminent Domain § 670](#)

Fair Labor Standards Act, Secretary of Labor as permitted to file brief as amicus curiae in employee's suit under see [Am. Jur. 2d, Labor and Labor Relations § 3217](#)

Immigration Reform and Control Act Proceeding hearing before administrative law judge concerning employment, limitations on amicus curiae's role in, see [Am. Jur. 2d, Job Discrimination § 1564](#)

Intervention by person not originally made party to pending action, see [Am. Jur. 2d, Parties §§ 144 et seq.](#)

Occupational Safety and Health Commission, appearance by leave as amicus curiae before, see [Am. Jur. 2d, Plant and Job Safety—OSHA and State Laws § 86](#)

Party to pending action, distinction between amicus curiae and, see [Am. Jur. 2d, Parties § 6](#)

Res judicata, whether judgment operates as, in respect of amicus curiae, see [Am. Jur. 2d, Judgments § 572](#)

Tax Court, requests by interested third persons who have no basis either for joinder or for intervention to file briefs amici curiae to, see [Am. Jur. 2d, Federal Tax Enforcement § 648](#)

Unfair labor practice charge, charging party's filing of amicus brief in proceeding pertaining to, see [Am. Jur. 2d, Labor and Labor Relations § 2639](#)

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4 Am. Jur. 2d Amicus Curiae I Refs.

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae

Marie K. Pesando, J.D.

I. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  1

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A.L.R. Index, Amicus Curiae

West's A.L.R. Digest, Amicus Curiae  1

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4 Am. Jur. 2d Amicus Curiae § 1

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

I. In General

§ 1. Definition and role of amicus curiae

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  1

The literal meaning of the term “amicus curiae” is a friend of the court.¹ The term refers to persons, whether attorneys or laypersons, who interpose in a judicial proceeding to assist the court by giving information or otherwise, or who conduct an investigation or other proceeding on request, or by court appointment.² In the federal courts, a brief of an amicus curiae may be filed only if accompanied by the written consent of all parties, or by leave of the court granted on motion, or at the request of the court.³

The role of an amicus curiae is to assist the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.⁴ Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties; among other services, they facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal questions.⁵ The appearance of amicus curiae is permitted for the purpose of assisting the court on matters of law about which the court is doubtful,⁶ rather than presenting a partisan view of the facts.⁷

An amicus curiae is one who assists the court by way of offering information and legal argument.⁸ The usual rationale for amicus curiae submissions is that they are of aid to the court and offer insights not available from the parties,⁹ and help the court with points of law.¹⁰ An amicus can assist the court by (1) providing adversarial presentations when neither side is represented, (2) providing an adversarial presentation when only one point of view is represented, (3) supplementing the efforts of counsel even when both sides are represented, and (4) drawing the court's attention to broader legal or policy implications that might otherwise escape the court's consideration.¹¹

Although no specific rule permits amicus participation in the trial court, there is no rule prohibiting it, and there is no reason a trial judge should not have discretion to permit such participation if it may be helpful to the court.¹² In addition, there is no

requirement an interested party must intervene, as opposed to filing as amicus.¹³ Since criminal procedure law provides no mechanism for a nonparty to intervene or be joined in a criminal case, a nonparty wishing to supplement arguments made to a court on an issue of law may seek leave to appear as amicus curiae.¹⁴

Because amicus curiae presentations assist the court by broadening its perspectives on the issues raised by the parties, a court is inclined, except in cases of obvious abuse of the amicus curiae privilege, not to employ orders to strike as a means of regulating their contents.¹⁵

Federal Rules of Evidence are not a bar to judicial notice of an amicus brief filed in a separate action, since the brief is not a fact, legal or adjudicative, but rather a legal argument.¹⁶

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Footnotes

- 1 [Connerly v. State Personnel Bd.](#), 37 Cal. 4th 1169, 39 Cal. Rptr. 3d 788, 129 P.3d 1 (2006); [Ciba-Geigy Ltd. v. Fish Peddler, Inc.](#), 683 So. 2d 522 (Fla. 4th DCA 1996); [In re J.W.](#), 204 Ill. 2d 50, 272 Ill. Dec. 561, 787 N.E.2d 747 (2003); [State v. Robert](#), 2012 SD 60, 820 N.W.2d 136 (S.D. 2012).
- 2 [U.S. v. State of Mich.](#), 940 F.2d 143, 20 Fed. R. Serv. 3d 576 (6th Cir. 1991); [Premier Industries v. Mead](#), 595 So. 2d 122 (Fla. 1st DCA 1992).
As to a discussion of appointment and appearance by court invitation, see § 2.
As to a discussion of appointment and appearance by leave of court, see § 3.
- 3 § 9.
- 4 [Mobile County Water, Sewer and Fire Protection Authority, Inc. v. Mobile Area Water and Sewer System, Inc.](#), 567 F. Supp. 2d 1342 (S.D. Ala. 2008), [aff'd](#), 564 F.3d 1290 (11th Cir. 2009); [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College](#), 308 F.R.D. 39, 321 Ed. Law Rep. 358, 91 Fed. R. Serv. 3d 1962 (D. Mass. 2015), [aff'd](#), 807 F.3d 472, 324 Ed. Law Rep. 645, 93 Fed. R. Serv. 3d 792 (1st Cir. 2015); [Sierra Club v. Wagner](#), 581 F. Supp. 2d 246, 2008 DNH 113 (D.N.H. 2008), [aff'd](#), 555 F.3d 21 (1st Cir. 2009).
- 5 [In re Marriage Cases](#), 43 Cal. 4th 757, 76 Cal. Rptr. 3d 683, 183 P.3d 384 (2008).
- 6 [Parma v. Malinowski](#), 2014-Ohio-1076, 9 N.E.3d 1112 (Ohio Ct. App. 8th Dist. Cuyahoga County 2014).
- 7 [BancInsure, Inc. v. U.K. Bancorporation Inc./United Kentucky Bank of Pendleton County, Inc.](#), 830 F. Supp. 2d 294 (E.D. Ky. 2011).
- 8 [Teamsters Joint Council No. 10 v. Director of Dept. of Labor and Workforce Development](#), 447 Mass. 100, 849 N.E.2d 810 (2006); [State v. Robert](#), 2012 SD 60, 820 N.W.2d 136 (S.D. 2012).
- 9 [Citizens Against Casino Gambling in Erie County v. Kempthorne](#), 471 F. Supp. 2d 295 (W.D. N.Y. 2007), [amended on other grounds on reconsideration in part](#), 2007 WL 1200473 (W.D. N.Y. 2007).
- 10 [Ochoa Ag Unlimited, L.L.C. v. Delanoy](#), 128 Wash. App. 165, 114 P.3d 692 (Div. 3 2005).
- 11 [State ex rel. Com'r of Transp. v. Medicine Bird Black Bear White Eagle](#), 63 S.W.3d 734 (Tenn. Ct. App. 2001).
- 12 [Witty v. Planning and Zoning Com'n of Town of Hartland](#), 66 Conn. App. 387, 784 A.2d 1011 (2001); [Parsons v. State, Dept. of Social and Health Services](#), 129 Wash. App. 293, 118 P.3d 930 (Div. 1 2005).
- 13 [Parsons v. State, Dept. of Social and Health Services](#), 129 Wash. App. 293, 118 P.3d 930 (Div. 1 2005).
- 14 [People v. Combest](#), 4 N.Y.3d 859, 798 N.Y.S.2d 350, 831 N.E.2d 407 (2005).
- 15 [Cornette v. Department of Transp.](#), 26 Cal. 4th 63, 109 Cal. Rptr. 2d 1, 26 P.3d 332 (2001).
- 16 [Natural Resources Defense Council v. Southwest Marine, Inc.](#), 39 F. Supp. 2d 1235, 51 Fed. R. Evid. Serv. 1135 (S.D. Cal. 1999), [aff'd on other grounds](#), 236 F.3d 985 (9th Cir. 2000).

4 Am. Jur. 2d Amicus Curiae § 2

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

I. In General

§ 2. Appointment and appearance of amicus by court invitation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  1

In order that it may have the benefit of the fullest discussion of a cause which it might otherwise decide erroneously, a court undoubtedly has an inherent right to appoint or request a lawyer, or other person, to appear and act as its adviser.¹ Thus, where a court needs to obtain the advice of a disinterested expert on the law applicable to a proceeding before the court, it can invite the expert to file a brief amicus curiae, provided that it gives notice to the parties of the person consulted and a copy of such advice, and affords the parties reasonable opportunity to respond.² However, it is not appropriate for a state supreme court to invite a state to participate in an appeal as amicus curiae, where the state does not participate either in the trial court or appellate proceedings, and the state takes no steps to intervene as a party or participate as amicus.³ A federal court may always call on law officers of the United States to serve as amici curiae to represent the public interest in the administration of justice.⁴ However, participation by an amicus curiae is more appropriate at the appellate level, where only questions of law are in issue.⁵ Nonetheless, in a proper case, even at the trial level, an amicus curiae may be appointed to aid and assist the court by the performance of certain services which are necessary to guide the court to a proper conclusion.⁶

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Footnotes

- 1 [U.S. v. State of La., 751 F. Supp. 606, 64 Ed. Law Rep. 1056 \(E.D. La. 1990\).](#)
As to a discussion of appointment of amicus curiae by leave of court, see § 3.
- 2 [New York State Senator Kruger v. Bloomberg, 1 Misc. 3d 192, 768 N.Y.S.2d 76 \(Sup 2003\).](#)
- 3 [Stamford Hosp. v. Vega, 236 Conn. 646, 674 A.2d 821 \(1996\).](#)
- 4 [Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 66 S. Ct. 1176, 90 L. Ed. 1447 \(1946\);](#)
[DeVonish v. Garza, 510 F. Supp. 658 \(W.D. Tex. 1981\).](#)
- 5 [Linker v. Custom-Bilt Machinery Inc., 594 F. Supp. 894 \(E.D. Pa. 1984\).](#)

6 [Baluch v. Baluch, 180 Mich. App. 689, 447 N.W.2d 775 \(1989\).](#)

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4 Am. Jur. 2d Amicus Curiae § 3

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

I. In General

§ 3. Appointment and appearance of amicus by leave of court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  1

Forms

Forms relating to amicus curiae, generally, see Am. Jur. Pleading and Practice Forms, Amicus Curiae; Am. Jur. Pleading and Practice Forms, Appeal and Error; Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure; Federal Procedural Forms, Appeal, Certiorari, and Review [[Westlaw®\(r\) Search Query](#)]

The appearance of an amicus curiae is generally authorized by the court's grant of an application for the privilege of appearing as amicus curiae and not as of right.¹ Courts have inherent authority to appoint an amicus even in the absence of a rule or statute.² Accordingly, the fact, extent, and manner of an amicus curiae's participation is entirely within the court's discretion and an amicus curiae may ordinarily be heard only by leave of the court.³ A court will deny a motion for leave to submit an amicus curiae brief that is filed after the normal briefing cycle set for the party to be supported, where the amici fail to show the requisite extraordinary cause for leave to file their brief.⁴ The mere filing of a brief without leave by an amicus curiae does not constitute reversible error in an action, absent any showing that the trial court considered the brief.⁵ Applicants granted amici status in an action bear the burden of demonstrating that they specifically could contribute expertise and arguments not presented by the parties.⁶ Rules of practice governing appellate amicus briefs have survived constitutional challenges claiming they were both unconstitutionally facially vague and unconstitutionally vague as applied to attorneys who are sanctioned for filing amicus briefs without first obtaining permission from a court.⁷

The criterion for deciding whether to permit filing of an amicus brief is whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties' briefs.⁸ If the granting of amicus curiae status might delay a case, the court can deny the application in its discretion.⁹ In determining whether to accept an amicus brief, courts consider, among other things, (1) whether the proposed amicus is a disinterested entity, (2) whether there is opposition to the entry of the amicus, (3) whether counsel is capable of making arguments without the assistance of an amicus, (4) the strength of the information and argument presented by the potential amicus curiae's interests, and (5) perhaps most importantly, the usefulness of information and argument presented by the potential amicus curiae to the court.¹⁰ Participation of amicus curiae is normally appropriate when a party is not represented competently or is not represented at all, the amicus has an interest in some other case that may be affected by the decision in the present case, or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.¹¹ Another factor courts consider is whether the case has broad implications or is of general public interest.¹² While there is certainly no requirement that amici be totally disinterested, the partiality of an amicus is a factor to consider in deciding whether to allow participation.¹³ A private individual seeking to file an amicus appellate brief does not need to be impartial, and may have a pecuniary interest in the outcome of the case.¹⁴

A motion for leave to file an amicus curiae brief should not be granted unless the court deems the proffered information timely and useful.¹⁵ An entity seeking to appear as amicus must make a showing that its participation is useful or otherwise desirable to the court.¹⁶ At the trial level, where the issues of fact as well as law predominate, the aid of amicus curiae may be less appropriate than at the appellate level where such participation has become standard procedure.¹⁷

A federal court of appeals will grant permission to file an amicus brief only when (1) a party is not adequately represented; or (2) when the would-be amicus has a direct interest in another case, and the case in which he or she seeks permission to file an amicus curiae brief may, by operation of stare decisis or res judicata, materially affect that interest; or (3) when the amicus has a unique perspective, or information, that can assist the court of appeals beyond what the parties are able to do.¹⁸ In deciding whether to allow participation by amici curiae, the Court of Federal Claims considers whether movants might have a perspective that would be helpful to the court or otherwise provide information and argument that would illuminate the issues in the case.¹⁹ In ruling on a motion for leave to file an amicus curiae brief, the Court of Federal Claims considers objections from the opposing party, the interest of the moving party, partisanship on the part of the amici, the adequacy of the movant's representation, and timeliness; the court may also consider whether the additional argument is useful to the court's analysis, and whether participation of the amici would cause unnecessary delay.²⁰ Federal district courts have discretion whether to grant or deny leave to appear as amicus curiae and often look for guidance to the rule which applies to amicus briefs at the federal appeals level.²¹

As a general matter, appointing an amicus is reserved for rare and unusual cases that involve questions of general or public interest,²² or when the rights of children are involved.²³ Absent a statute to the contrary, no distinction is made between the request of a private person for leave to appear as amicus curiae and one by an agent of the government.²⁴ State legislative leaders will not be permitted to file amicus curiae briefs where the amicus briefs sought to be filed essentially cover the same ground as the parties' appellate briefs, no party is inadequately represented, and the would-be amici have no direct interest in any other case that might be materially affected by the instant decision.²⁵ A federal agency acting as amicus curiae will get no special deference from the court in questions involving interpretation of its own regulations.²⁶ A court may decline to accord deference, in determining a statutory interpretation question, to a statement regarding the statute that is contained in an amicus brief submitted by a federal agency two years earlier in connection with another matter, where the cases in question are substantially and materially different.²⁷

Under federal law, when presented with significant legal issues in an independent counsel's matter, the United States Court of Appeals for the District of Columbia is permitted to disclose sufficient information to permit the timely filing of amicus curiae

briefs.²⁸ Federal statutes governing independent counsel²⁹ do not prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such case or proceeding.³⁰

CUMULATIVE SUPPLEMENT

Cases:

Court would not permit state senator to file amicus curiae brief in action challenging U.S. Fish and Wildlife Service's (USFWS) issuance of incidental-take permit for endangered beetles to power district that sought to build electrical transmission line and its NEPA analysis of project; although senator's district encompassed at least part of the project, his arguments that USFWS was unsympathetic to his opposition to project and that USFWS did not rely on best available science were not useful to court and relied on information and documents outside of the administrative record. Endangered Species Act of 1973 § 10, [16 U.S.C.A. § 1539\(a\)\(2\)\(B\)\(ii\)](#); National Environmental Policy Act of 1969, § 2 et seq., [42 U.S.C.A. § 4321 et seq.](#) [Oregon-California Trails Association v. Walsh](#), 467 F. Supp. 3d 1007 (D. Colo. 2020).

Humane society's amicus brief, in support of drug sponsor's challenge to Food and Drug Administration's (FDA's) partial clinical hold on experimental drug used to treat gastroparesis, a chronic but nonfatal digestive disorder, until drug sponsor conducted a long-term toxicity study on non-rodent animals, contained arguments that were either impermissible or duplicative of drug sponsor's arguments in its motion for summary judgment, and thus court would deny humane society's motion for leave to file amicus brief; argument that dog models were generally poor predictors of human responses was variant of argument made by sponsor, and arguments that non-animal alternatives could determine human safety risks could not help court evaluate whether FDA's partial hold was arbitrary and capricious. [Vanda Pharmaceuticals, Inc. v. Food and Drug Administration](#), 436 F. Supp. 3d 256 (D.D.C. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Fluor Corp. v. U.S.](#), 35 Fed. Cl. 284 (1996); [State v. Ross](#), 272 Conn. 577, 863 A.2d 654 (2005); [State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court of Common Pleas](#), 126 Ohio St. 3d 41, 2010-Ohio-2450, 930 N.E.2d 299 (2010).
As to a discussion of appointment of amicus curiae by court invitation, see § 2.
- 2 [State ex rel. Com'r of Transp. v. Medicine Bird Black Bear White Eagle](#), 63 S.W.3d 734 (Tenn. Ct. App. 2001).
- 3 [Voices for Choices v. Illinois Bell Telephone Co.](#), 339 F.3d 542, 56 Fed. R. Serv. 3d 322 (7th Cir. 2003); [United States v. Board of County Commissioners of the County of Otero](#), 184 F. Supp. 3d 1097 (D.N.M. 2015), *aff'd*, 843 F.3d 1208 (10th Cir. 2016), *cert. denied*, 138 S. Ct. 84, 199 L. Ed. 2d 184 (2017); [Citizens Against Casino Gambling in Erie County v. Kempthorne](#), 471 F. Supp. 2d 295 (W.D. N.Y. 2007), amended on other grounds on reconsideration in part, 2007 WL 1200473 (W.D. N.Y. 2007); [Ohio Valley Environmental Coalition, Inc. v. McCarthy](#), 313 F.R.D. 10, 93 Fed. R. Serv. 3d 690 (S.D. W. Va. 2015); [Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC](#), 550 B.R. 241 (Bankr. S.D. N.Y. 2016); [Wolfchild v. U.S.](#), 62 Fed. Cl. 521 (2004), *rev'd on other grounds*, 559 F.3d 1228 (Fed. Cir. 2009); [State v. Ross](#), 272 Conn. 577, 863 A.2d 654 (2005); [In re State ex rel. Essex County Prosecutor's Office](#), 427 N.J. Super. 1, 46 A.3d 616 (Law Div. 2012).
- 4 [Mitchell v. Griffin Television, L.L.C.](#), 2002 OK CIV APP 115, 60 P.3d 1058 (Div. 3 2002).
- 5 [Vela v. Hope Lumber & Supply Co.](#), 1998 OK CIV APP 162, 966 P.2d 1196 (Div. 1 1998).

- 6 Hage v. U.S., 35 Fed. Cl. 737 (1996).
- 7 Thalheim v. Town of Greenwich, 256 Conn. 628, 775 A.2d 947 (2001).
- 8 Voices for Choices v. Illinois Bell Telephone Co., 339 F.3d 542, 56 Fed. R. Serv. 3d 322 (7th Cir. 2003);
F.T.C. v. Wyndham Worldwide Corp., 10 F. Supp. 3d 602 (D.N.J. 2014), *aff'd*, 799 F.3d 236 (3d Cir. 2015).
- 9 New York State Senator Kruger v. Bloomberg, 1 Misc. 3d 192, 768 N.Y.S.2d 76 (Sup 2003).
- 10 United States v. Board of County Commissioners of the County of Otero, 184 F. Supp. 3d 1097 (D.N.M.
2015), *aff'd*, 843 F.3d 1208 (10th Cir. 2016), *cert. denied*, 138 S. Ct. 84, 199 L. Ed. 2d 184 (2017).
- 11 Hard Drive Productions, Inc. v. Does 1-1,495, 892 F. Supp. 2d 334 (D.D.C. 2012).
It is precisely because an untrained pro se party may be unable to identify and articulate the potentially
meritorious arguments in his case that the court of appeals sometimes exercises its discretion to appoint
amici. Bowie v. Maddox, 642 F.3d 1122 (D.C. Cir. 2011).
- 12 In re State ex rel. Essex County Prosecutor's Office, 427 N.J. Super. 1, 46 A.3d 616 (Law Div. 2012); Empire
State Ass'n of Assisted Living, Inc. v. Daines, 26 Misc. 3d 340, 887 N.Y.S.2d 452 (Sup 2009).
- 13 Jin v. Ministry of State Security, 557 F. Supp. 2d 131 (D.D.C. 2008); Picard v. Greiff, 797 F. Supp. 2d 451
(S.D. N.Y. 2011); Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities
LLC, 550 B.R. 241 (Bankr. S.D. N.Y. 2016).
- 14 Neonatology Associates, P.A. v. C.I.R., 293 F.3d 128, 52 Fed. R. Serv. 3d 1377 (3d Cir. 2002).
- 15 American Humanist Ass'n v. Maryland-National Capital Park and Planning Com'n, 303 F.R.D. 266 (D. Md.
2014); F.T.C. v. Wyndham Worldwide Corp., 10 F. Supp. 3d 602 (D.N.J. 2014), *aff'd*, 799 F.3d 236 (3d
Cir. 2015).
- 16 Animal Science Products, Inc. v. China Nat. Metals & Minerals Import & Export Corp., 596 F. Supp. 2d
842 (D.N.J. 2008).
- 17 Finkle v. Howard County, Md., 12 F. Supp. 3d 780 (D. Md. 2014).
- 18 National Organization for Women, Inc. v. Scheidler, 223 F.3d 615, 47 Fed. R. Serv. 3d 447 (7th Cir. 2000).
- 19 Fairholme Funds, Inc. v. United States, 132 Fed. Cl. 49 (2017).
- 20 David H. v. United States, 135 Fed. Cl. 66 (2017).
- 21 American Humanist Ass'n v. Maryland-National Capital Park and Planning Com'n, 303 F.R.D. 266 (D. Md.
2014), *referring to* Fed. R. App. P. 29, *discussed in* § 9.
- 22 Ciba-Geigy Ltd. v. Fish Peddler, Inc., 683 So. 2d 522 (Fla. 4th DCA 1996); State ex rel. Com'r of Transp.
v. Medicine Bird Black Bear White Eagle, 63 S.W.3d 734 (Tenn. Ct. App. 2001).
- 23 Baluch v. Baluch, 180 Mich. App. 689, 447 N.W.2d 775 (1989); Matter of Foster Care Status of George
Joey S., 194 A.D.2d 328, 598 N.Y.S.2d 229 (1st Dep't 1993).
- 24 U.S. v. State of La., 751 F. Supp. 606, 64 Ed. Law Rep. 1056 (E.D. La. 1990).
- 25 Voices for Choices v. Illinois Bell Telephone Co., 339 F.3d 542, 56 Fed. R. Serv. 3d 322 (7th Cir. 2003).
- 26 Grimes By and Through Grimes v. Sobol, 832 F. Supp. 704, 86 Ed. Law Rep. 727 (S.D. N.Y. 1993), *judgment*
aff'd, 37 F.3d 857, 95 Ed. Law Rep. 50 (2d Cir. 1994).
- 27 Nathan Kimmel, Inc. v. DowElanco, 275 F.3d 1199 (9th Cir. 2002).
- 28 28 U.S.C.A. § 593(h).
- 29 28 U.S.C.A. §§ 591 et seq.
- 30 28 U.S.C.A. § 597(b).

4 Am. Jur. 2d Amicus Curiae § 4

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

I. In General

§ 4. Appointment and appearance of amicus as of right by Senate counsel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  [1](#)

In general, appearance of an amicus curiae is authorized by court appointment¹ or by the court's grant of an application for the privilege of appearing as amicus curiae and not as of right.² However, there is a limited exception under federal law which states that the Office of Senate Legal Counsel may appear as of right as amicus curiae in the name of the Senate, or in the name of an officer, committee, subcommittee, or chairman of a committee or subcommittee of the Senate in any legal action or proceeding pending in any court of the United States or of a state or political subdivision thereof in which the powers and responsibilities of Congress under the Constitution of the United States are placed in issue.³

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Footnotes

- [1](#) [§ 2.](#)
- [2](#) [§ 3.](#)
- [3](#) [2 U.S.C.A. § 288e\(a\).](#)

End of Document

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4 Am. Jur. 2d Amicus Curiae § 5

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

I. In General

§ 5. Participation as amicus satisfying need for intervention

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  1

Legal Encyclopedias

For a discussion of the process of intervention whereby a person not originally made a party may be permitted on his own application to obtain the status of a party, see Am. Jur. 2d, Parties [\[Westlaw®\(r\): Search Query\]](#)

A person may be granted leave to appear as amicus curiae where he or she has no right to intervene and participate as a formal party in the suit.¹ Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention.² Amicus curiae status ordinarily will be granted instead of intervention where the only issues involved are of law, and the applicant would contribute little but possibly complicate the proceedings,³ or where the applicant has only an attenuated interest in the legal issues and intervention might significantly complicate the proceedings.⁴ Amicus curiae status will also be chosen over intervention where the potential intervenors are adequately represented by an existing party and will not add to the relevant factual development of the case, particularly if such intervention may materially diminish the original parties' rights.⁵

A court has broad discretion to permit proposed intervenors to participate as amici curiae.⁶ Courts considering whether to designate an amicus and the role the amicus should play should consider, among other things, whether the person or organization seeking amicus status is manipulating this role as a substitute for intervention.⁷ Accordingly, a court does not abuse its discretion in denying permissive intervention when participation by the applicant as an amicus curiae satisfies the asserted need for intervention.⁸

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Footnotes

- 1 Rio Grande Pipeline Co. v. F.E.R.C., 178 F.3d 533 (D.C. Cir. 1999); Ohio Valley Environmental Coalition, Inc. v. McCarthy, 313 F.R.D. 10, 93 Fed. R. Serv. 3d 690 (S.D. W. Va. 2015); New York State Senator Kruger v. Bloomberg, 1 Misc. 3d 192, 768 N.Y.S.2d 76 (Sup 2003).
- 2 Mat-Su Regional Medical Center, LLC v. Burkhead, 225 P.3d 1097 (Alaska 2010); Hairr v. First Jud. Dist. Ct., 368 P.3d 1198, 329 Ed. Law Rep. 1132, 132 Nev. Adv. Op. No. 16 (Nev. 2016).
- 3 Kheel v. American S. S. Owners Mut. Protection & Indem. Ass'n, 45 F.R.D. 281, 12 Fed. R. Serv. 2d 618 (S.D. N.Y. 1968).
- 4 Piedmont Heights Civic Club, Inc. v. Moreland, 83 F.R.D. 153, 28 Fed. R. Serv. 2d 521 (N.D. Ga. 1979).
- 5 New Orleans Public Service, Inc. v. United Gas Pipe Line Co., 732 F.2d 452, 39 Fed. R. Serv. 2d 1 (5th Cir. 1984); U.S. v. State of Mich., 940 F.2d 143, 20 Fed. R. Serv. 3d 576 (6th Cir. 1991).
- 6 District of Columbia v. Potomac Elec. Power Co., 826 F. Supp. 2d 227, 81 Fed. R. Serv. 3d 47 (D.D.C. 2011).
- 7 State ex rel. Com'r of Transp. v. Medicine Bird Black Bear White Eagle, 63 S.W.3d 734 (Tenn. Ct. App. 2001).
- 8 U.S. v. State of Mich., 940 F.2d 143, 20 Fed. R. Serv. 3d 576 (6th Cir. 1991); Bates v. Jones, 127 F.3d 870 (9th Cir. 1997).

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4 Am. Jur. 2d Amicus Curiae II Refs.

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae

Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  2, 3

A.L.R. Library

A.L.R. Index, Amicus Curiae

West's A.L.R. Digest, [Amicus Curiae](#)  2, 3

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4 Am. Jur. 2d Amicus Curiae § 6

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

§ 6. Rights and powers of amicus, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  3

The function of an amicus curiae is to call the court's attention to law or facts or circumstances in a matter then before it that may otherwise escape its consideration.¹ An amicus curiae's principal or usual function is to aid the court on questions of law,² but whatever the matter with reference to which an amicus curiae undertakes to inform the court, he or she should act in good faith, make full disclosure on the point, and suppress nothing with intent to deceive the court.³ An amicus curiae does not represent the parties, but participates only for the benefit of the court, and thus it is solely within the court's discretion to determine the fact, extent, and manner of participation by the amicus.⁴

An amicus curiae is not a party and generally cannot assume the functions of a party,⁵ or an attorney for a party.⁶ Accordingly, the appearance of an attorney as amicus curiae is not an appearance for a party,⁷ unless the person appointed amicus curiae is actually more than that, such as an attorney who is actually acting for the interest of a party rather than for the personal benefit of the court.⁸ When amicus status is granted, the named parties should always remain in control, with the amicus merely responding to the issues presented by the parties.⁹

Although an amicus curiae is not considered a party to litigation, the communications between an amicus curiae and its attorney are protected by the attorney-client privilege just as any other communication between an attorney and client, and the work-product privilege may be invoked in some circumstances by an attorney who does not represent a named party to an action.¹⁰ Since an amicus curiae is not a party to the case, the amicus curiae has no right to bring the case from one court to another or from a single judge to the full court by appeal.¹¹

An amicus curiae has no control over the litigation and no right to institute any proceedings in it.¹² An amicus curiae is not vested with the management of the case.¹³ He or she is not bound by the judgment of the court,¹⁴ nor can he or she appeal it,¹⁵ except in rare circumstances.¹⁶ Moreover, an amicus curiae ordinarily cannot conduct discovery¹⁷ or file pleadings or motions

in the cause¹⁸ but is restricted to suggestions relative to matters apparent on the record or to matters of practice.¹⁹ It is not the proper role of an amicus to comment on the existence of allegedly newly discovered evidence.²⁰

Participation as amicus curiae is also not sufficient to put the rule of res judicata into operation.²¹ Hence, a request to be allowed to file a brief as amicus curiae and the denial of such request do not have the effect of making one a party to a suit so as to be bound by the judgment rendered in it.²² However, an amicus curiae acts properly on a pro se appeal from summary judgment by seeking reconsideration in the appellate court after the summary judgment was summarily affirmed, and by obtaining counsel to act in a pro bono capacity on behalf of the pro se individual.²³

CUMULATIVE SUPPLEMENT

Cases:

Permitting environmental advocacy groups to file amicus curiae briefs in action brought by solid waste incineration facilities in city against city council and mayor after city passed Baltimore Clean Air Act (BCAA), which placed limitations on pollution emissions, was not warranted; although groups purported to have special interest in litigation, proposed amici briefs did not provide any legal analysis beyond arguments raised in parties' briefs and were not necessary to court's determination of legal issues at hand. [Fed. R. App. P. 29\(b\)\(2\). Wheelabrator Baltimore, L.P. v. Mayor and City Council of Baltimore, 449 F. Supp. 3d 549 \(D. Md. 2020\).](#)

Candidate failed to establish that she was entitled to strike the merit brief of amicus curiae, in mandamus action seeking to have candidate's name placed on the primary ballot as a candidate for state representative; candidate failed to cite any authority for striking the brief on the ground that it raised false issues, caused confusion, and served no purpose, and her motion included substantive rebuttals to the points in the amicus brief that she disputed. [State ex rel. White v. Franklin County Board of Elections, 160 Ohio St. 3d 1, 2020-Ohio-524, 153 N.E.3d 1 \(2020\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [Kemp v. Rubin, 187 Misc. 707, 64 N.Y.S.2d 510 \(Sup 1946\); Wyoming Coalition v. Wyoming Game & Fish Com'n, 875 P.2d 729 \(Wyo. 1994\).](#)
- 2 [People v. Robbins, 78 A.D.2d 750, 432 N.Y.S.2d 737 \(3d Dep't 1980\); Lakewood v. State Emp. Relations Bd., 66 Ohio App. 3d 387, 584 N.E.2d 70 \(8th Dist. Cuyahoga County 1990\).](#)
- 3 [Pave Way Const. Co., Inc. v. Parrish, 187 Ga. App. 428, 370 S.E.2d 495 \(1988\).](#)
- 4 [Hard Drive Productions, Inc. v. Does 1-1,495, 892 F. Supp. 2d 334 \(D.D.C. 2012\).](#)
- 5 [Evans v. Georgia Regional Hospital, 850 F.3d 1248 \(11th Cir. 2017\), cert. denied, 138 S. Ct. 557, 199 L. Ed. 2d 446 \(2017\); Sierra Club v. Wagner, 581 F. Supp. 2d 246, 2008 DNH 113 \(D.N.H. 2008\), aff'd, 555 F.3d 21 \(1st Cir. 2009\); United States v. Board of County Commissioners of the County of Otero, 184 F. Supp. 3d 1097 \(D.N.M. 2015\), aff'd, 843 F.3d 1208 \(10th Cir. 2016\), cert. denied, 138 S. Ct. 84, 199 L. Ed. 2d 184 \(2017\); Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC, 550 B.R. 241 \(Bankr. S.D. N.Y. 2016\); Carter v. Mississippi Farm Bureau Cas. Ins. Co., 2005 MT 74, 326 Mont. 350, 109 P.3d 735 \(2005\); New Energy Economy, Inc. v. Vanzi, 2012-NMSC-005, 274 P.3d 53 \(N.M. 2012\); Parma v. Malinowski, 2014-Ohio-1076, 9 N.E.3d 1112 \(Ohio Ct. App. 8th Dist. Cuyahoga County 2014\); Wright v. Denny, 33 A.3d 687 \(Pa. Commw. Ct. 2011\); State ex rel. Com'r of Transp. v. Medicine Bird Black Bear White Eagle, 63 S.W.3d 734 \(Tenn. Ct. App. 2001\).](#)

- 6 Briggs v. U.S., 597 A.2d 370 (D.C. 1991); Hyde Corp. v. Huffines, 158 Tex. 566, 314 S.W.2d 763 (1958).
- 7 Brown v. Wright, 137 F.2d 484 (C.C.A. 4th Cir. 1943); In re Ohlhauser's Estate, 78 S.D. 319, 101 N.W.2d 827 (1960).
- 8 Matter of Additional Magistrates for St. Louis County, 580 S.W.2d 288 (Mo. 1979); Nicklas v. Ajax Elec. Co., 337 S.W.2d 163 (Tex. Civ. App. Austin 1960).
- 9 United States v. Board of County Commissioners of the County of Otero, 184 F. Supp. 3d 1097 (D.N.M. 2015), *aff'd*, 843 F.3d 1208 (10th Cir. 2016), *cert. denied*, 138 S. Ct. 84, 199 L. Ed. 2d 184 (2017).
- 10 Gannett New Jersey Partners, LP v. County Of Middlesex, 379 N.J. Super. 205, 877 A.2d 330 (App. Div. 2005).
- 11 State ex rel. Six v. Kansas Lottery, 286 Kan. 557, 186 P.3d 183 (2008) (no standing to file appeals); In re Harvard Pilgrim Health Care, Inc., 434 Mass. 51, 746 N.E.2d 513 (2001).
- 12 U.S. v. State of Mich., 940 F.2d 143, 20 Fed. R. Serv. 3d 576 (6th Cir. 1991); United States v. Board of County Commissioners of the County of Otero, 184 F. Supp. 3d 1097 (D.N.M. 2015), *aff'd*, 843 F.3d 1208 (10th Cir. 2016), *cert. denied*, 138 S. Ct. 84, 199 L. Ed. 2d 184 (2017); Com. v. Cotto, 708 A.2d 806 (Pa. Super. Ct. 1998), *order aff'd*, 562 Pa. 32, 753 A.2d 217 (2000).
- 13 Hyde Corp. v. Huffines, 158 Tex. 566, 314 S.W.2d 763 (1958).
- 14 U.S. v. State of Mich., 940 F.2d 143, 20 Fed. R. Serv. 3d 576 (6th Cir. 1991); Munoz v. Imperial County, 667 F.2d 811 (9th Cir. 1982); Premier Industries v. Mead, 595 So. 2d 122 (Fla. 1st DCA 1992).
- 15 Manago v. Rosario, 91 Fed. Appx. 9 (9th Cir. 2004); Pueblo of Santa Ana v. Nash, 854 F. Supp. 2d 1128 (D.N.M. 2012); Briggs v. U.S., 597 A.2d 370 (D.C. 1991).
- 16 Farmers Ins. Exchange v. Nagle, 190 N.W.2d 758 (N.D. 1971).
- 17 Pueblo of Santa Ana v. Nash, 854 F. Supp. 2d 1128 (D.N.M. 2012).
- 18 U.S. v. State of La., 718 F. Supp. 525, 55 Ed. Law Rep. 952 (E.D. La. 1989); United States v. Board of County Commissioners of the County of Otero, 184 F. Supp. 3d 1097 (D.N.M. 2015), *aff'd*, 843 F.3d 1208 (10th Cir. 2016), *cert. denied*, 138 S. Ct. 84, 199 L. Ed. 2d 184 (2017); Briggs v. U.S., 597 A.2d 370 (D.C. 1991).
- 19 Wiggins Bros., Inc. v. Department of Energy, 667 F.2d 77 (Temp. Emer. Ct. App. 1981); Tops Markets, Inc. v. County of Erie, 156 Misc. 2d 49, 591 N.Y.S.2d 694 (Sup 1992).
- 20 U.S. v. Yaroshenko, 86 F. Supp. 3d 289 (S.D. N.Y. 2015).
- 21 Am. Jur. 2d, Judgments § 572.
- 22 Brown v. Wright, 137 F.2d 484 (C.C.A. 4th Cir. 1943).
- 23 Lopez, Sr. v. Las Cruces Police Dept., 139 N.M. 730, 2006-NMCA-074, 137 P.3d 670 (Ct. App. 2006), as corrected, (June 29, 2006).

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4 Am. Jur. 2d Amicus Curiae § 7

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

§ 7. Issues raised by amicus

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  3

Forms

Forms relating to amicus curiae, generally, see Am. Jur. Pleading and Practice Forms, Amicus Curiae; Am. Jur. Pleading and Practice Forms, Appeal and Error; Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure; Federal Procedural Forms, Appeal, Certiorari, and Review [[Westlaw®\(r\) Search Query](#)]

In general, an amicus curiae must accept the case before the reviewing court as it stands on appeal, with the issues as framed by the parties.¹ Accordingly, an amicus curiae generally cannot raise issues that have not been preserved by the parties.² Although courts are not obligated to consider issues raised only by an amicus curiae,³ courts have discretion to do so,⁴ particularly if they are issues which the court could raise sua sponte,⁵ as for example, questions as to its jurisdiction,⁶ federalism or comity,⁷ exhaustion of remedies,⁸ or if a party has done something to incorporate the argument by reference in its own brief,⁹ or the new issues concern only other matters of law and involve important issues of policy.¹⁰ Also, arguments originally made only by an amicus curiae but later adopted by a party will be heard by the court.¹¹ Moreover, court-appointed amici enjoy relatively wide latitude to raise arguments not addressed on appeal by pro se parties.¹²

Observation:

The Supreme Court entertains arguments made by an amicus when the Solicitor General confesses error with respect to a judgment below, even if the confession is in effect an admission that an Act of Congress is unconstitutional.¹³

However, where a party does not adopt an amicus curiae argument in its brief, the argument is waived on appeal.¹⁴ Thus, a court will decline to address an argument made by amicus curiae where neither the parties nor the court below adopted the argument.¹⁵

An amicus curiae, like respondents, can advise the court of missing arguments.¹⁶ Although an amicus curiae is ordinarily limited to arguing issues raised by the parties, an amicus may present different arguments than the parties relating to those issues.¹⁷ However, an appellate court cannot grant relief on an issue raised by the amicus brief, but not by the appellant.¹⁸ Although courts generally refuse to consider issues as to the interpretation of a statutory provision unless such issues are also raised by, or joined in by, a party to the action,¹⁹ in some cases, courts exercise their discretion to consider issues of statutory interpretation raised in an amicus brief.²⁰ A court will not address the contention of an amicus curiae concerning an issue of statutory construction where the contention differs markedly from the position of the respondent who brought the action and was not addressed by the court below.²¹ An appellate court cannot properly consider evidence in an amicus brief that was never made part of the official record.²²

CUMULATIVE SUPPLEMENT

Cases:

Court of Appeals departed from principle of party presentation so drastically as to constitute an abuse of discretion, on defendant's appeal from her convictions for encouraging or inducing an alien to illegally come to, enter, or reside in United States in violation of Immigration and Nationality Act (INA), where defendant's counseled appellate brief and oral argument repeated her arguments in district court that statute of conviction violated First Amendment's Free Speech Clause and Petition Clause, and those arguments homed in on defendant's own conduct, but Court of Appeals invited amici to brief a First Amendment overbreadth issue concerning the expression of others, and Court of Appeals ultimately concluded, in accord with invited amici's arguments, that the statute was unconstitutionally overbroad. *U.S. Const. Amend. 1*; Immigration and Nationality Act § 274(a)(1)(A)(iv), (a)(1)(B)(i), 8 U.S.C.A. § 1324(a)(1)(A)(iv), (a)(1)(B)(i). *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Garcia-Melendez v. Ashcroft*, 351 F.3d 657 (5th Cir. 2003); *Baptist Health v. Murphy*, 358 Ark. 341, 189 S.W.3d 438 (2004); *Yolanda's, Inc. v. Kahl & Goveia Commercial Real Estate*, 11 Cal. App. 5th 509, 217 Cal. Rptr. 3d 625 (2d Dist. 2017); *People v. Caballero*, 206 Ill. 2d 65, 276 Ill. Dec. 356, 794 N.E.2d 251 (2002); *State v. O'Driscoll*, 215 N.J. 461, 73 A.3d 496 (2013); *K.R. Swerdfeger Construction v. UNM Board of Regents*, 140 N.M. 374, 2006-NMCA-117, 142 P.3d 962 (Ct. App. 2006).
- 2 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 189 L. Ed. 2d 675 (2014); *F.T.C. v. Phoebe Putney Health System, Inc.*, 568 U.S. 216, 133 S. Ct. 1003, 185 L. Ed. 2d 43 (2013); *Davidson v. City of Cranston*,

Rhode Island, 837 F.3d 135 (1st Cir. 2016); *Weaver's Cove Energy, LLC v. Rhode Island Coastal Resources Management Council*, 589 F.3d 458 (1st Cir. 2009); *World Wide Street Preachers Fellowship v. Town of Columbia*, 591 F.3d 747 (5th Cir. 2009); *Hill v. Mitchell*, 842 F.3d 910, 96 Fed. R. Serv. 3d 131 (6th Cir. 2016), cert. denied, 138 S. Ct. 82, 199 L. Ed. 2d 53 (2017); *Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169 (9th Cir. 2009); *Evans v. Georgia Regional Hospital*, 850 F.3d 1248 (11th Cir. 2017), cert. denied, 138 S. Ct. 557, 199 L. Ed. 2d 446 (2017); *Huerta v. Ducote*, 792 F.3d 144 (D.C. Cir. 2015); *Citizens Against Casino Gambling in Erie County v. Stevens*, 945 F. Supp. 2d 391 (W.D. N.Y. 2013), aff'd, 802 F.3d 267 (2d Cir. 2015), cert. denied, 136 S. Ct. 2387, 195 L. Ed. 2d 762 (2016); *U.S. v. Mullet*, 868 F. Supp. 2d 618 (N.D. Ohio 2012); *White Mountain Health Center, Inc. v. Maricopa County*, 241 Ariz. 230, 386 P.3d 416 (Ct. App. Div. 1 2016), review denied, (Sept. 12, 2017); *Baptist Health v. Murphy*, 358 Ark. 341, 189 S.W.3d 438 (2004); *In re Aurora P.*, 241 Cal. App. 4th 1142, 194 Cal. Rptr. 3d 383 (1st Dist. 2015); *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016); *State v. Crossen*, 328 Ga. App. 198, 761 S.E.2d 596 (2014); *Sierra Club v. Moser*, 298 Kan. 22, 310 P.3d 360 (2013); *Barfield v. Bolotte*, 185 So. 3d 781 (La. Ct. App. 1st Cir. 2015), writ denied, 191 So. 3d 1058 (La. 2016); *Poku v. Friedman*, 403 Md. 47, 939 A.2d 185 (2008); *Com. v. Dustin*, 476 Mass. 1003, 63 N.E.3d 375 (2016); *Harstad v. City of Woodbury*, 902 N.W.2d 64 (Minn. Ct. App. 2017), review granted, (Nov. 28, 2017); *State v. J.R.*, 227 N.J. 393, 152 A.3d 180 (2017); *K.R. Swerdfeger Construction v. UNM Board of Regents*, 140 N.M. 374, 2006-NMCA-117, 142 P.3d 962 (Ct. App. 2006); *Parma v. Malinowski*, 2014-Ohio-1076, 9 N.E.3d 1112 (Ohio Ct. App. 8th Dist. Cuyahoga County 2014); *Kennedy House, Inc. v. Philadelphia Com'n on Human Relations*, 143 A.3d 476 (Pa. Commw. Ct. 2016), appeal denied, 165 A.3d 902 (Pa. 2017).

An amicus normally cannot expand the scope of an appeal with issues not presented by the parties on appeal, at least not in cases where the parties are competently represented by counsel. *Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd.*, 836 F.3d 261 (3d Cir. 2016).

- 3 *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41 (1st Cir. 2007); *United States v. Ulbricht*, 858 F.3d 71, 103 Fed. R. Evid. Serv. 679 (2d Cir. 2017); *Allen v. C & H Distributors, L.L.C.*, 813 F.3d 566 (5th Cir. 2015); *Tides v. The Boeing Co.*, 644 F.3d 809 (9th Cir. 2011); *Golden Gate Restaurant Ass'n v. City and County of San Francisco*, 546 F.3d 639 (9th Cir. 2008); *North Dakota v. Heydinger*, 15 F. Supp. 3d 891 (D. Minn. 2014), aff'd, 825 F.3d 912 (8th Cir. 2016); *Kaufman v. Langhofer*, 223 Ariz. 249, 222 P.3d 272 (Ct. App. Div. 1 2009); *Hegseth v. American Family Mut. Ins. Group*, 877 N.W.2d 191 (Minn. 2016); *State v. Green*, 2004 UT 76, 99 P.3d 820 (Utah 2004); *State v. Hirschfelder*, 170 Wash. 2d 536, 242 P.3d 876 (2010); *County of Barron v. Labor and Industry Review Com'n*, 2010 WI App 149, 330 Wis. 2d 203, 792 N.W.2d 584 (Ct. App. 2010).
- 4 *Davis v. U.S.*, 512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994); *WildEarth Guardians v. National Park Service*, 804 F. Supp. 2d 1150 (D. Colo. 2011), aff'd, 703 F.3d 1178 (10th Cir. 2013) (only in exceptional circumstances); *California Highway Patrol v. Superior Court*, 135 Cal. App. 4th 488, 38 Cal. Rptr. 3d 16 (1st Dist. 2006), as modified on denial of reh'g, (Jan. 31, 2006); *Neravetla v. Department of Health*, 198 Wash. App. 647, 394 P.3d 1028 (Div. 2 2017), review denied, 189 Wash. 2d 1010, 403 P.3d 40 (2017).
- 5 *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989); *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio L. Abs. 513, 84 A.L.R.2d 933 (1961); *Genova v. Banner Health*, 734 F.3d 1095 (10th Cir. 2013); *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002); *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636 (Minn. 2012).
- 6 *Rhode Island Dept. of Environmental Management v. U.S.*, 304 F.3d 31 (1st Cir. 2002); *Genova v. Banner Health*, 734 F.3d 1095 (10th Cir. 2013); *Pan Asia Venture Capital Corp. v. Hearst Corp.*, 74 Cal. App. 4th 424, 88 Cal. Rptr. 2d 118 (1st Dist. 1999), as modified on denial of reh'g, (Sept. 20, 1999); *Mayor and City Council of Baltimore v. New Pulaski Co. Ltd. Partnership*, 112 Md. App. 218, 684 A.2d 888 (1996).
- 7 *Genova v. Banner Health*, 734 F.3d 1095 (10th Cir. 2013).
- 8 *Mayor and City Council of Baltimore v. New Pulaski Co. Ltd. Partnership*, 112 Md. App. 218, 684 A.2d 888 (1996).
- 9 *Genova v. Banner Health*, 734 F.3d 1095 (10th Cir. 2013); *Boniface v. U.S. Dept. of Homeland Sec.*, 613 F.3d 282 (D.C. Cir. 2010).
- 10 *Neilson v. City of California City*, 133 Cal. App. 4th 1296, 35 Cal. Rptr. 3d 453 (5th Dist. 2005).
- 11 *U.S. v. Van Winrow*, 951 F.2d 1069 (9th Cir. 1991); *Saul v. Midlantic Nat. Bank/South*, 240 N.J. Super. 62, 572 A.2d 650 (App. Div. 1990).

- 12 Wallaesa v. Federal Aviation Administration, 824 F.3d 1071 (D.C. Cir. 2016), cert. denied, 137 S. Ct. 389,
196 L. Ed. 2d 306 (2016).
- 13 U.S. v. Windsor, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).
- 14 Russian River Watershed Protection Committee v. City of Santa Rosa, 142 F.3d 1136 (9th Cir. 1998).
- 15 Peacock v. Thomas, 516 U.S. 349, 116 S. Ct. 862, 133 L. Ed. 2d 817 (1996).
- 16 Massachusetts Food Ass'n v. Massachusetts Alcoholic Beverages Control Com'n, 197 F.3d 560, 45 Fed. R.
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- 18 State v. Alaska Civil Liberties Union, 159 P.3d 513 (Alaska 2006); Nationwide Mut. Ins. Co. v. Chillura,
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- 19 Davis v. U.S., 512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994); Acton v. Ft. Lauderdale Hosp., 418
So. 2d 1099 (Fla. 1st DCA 1982), decision approved, 440 So. 2d 1282 (Fla. 1983); City of Minneapolis v.
Church Universal and Triumphant, 339 N.W.2d 880 (Minn. 1983).
- Amici curiae may not raise an issue as to the constitutionality of a statutory provision where such issue is
not raised by the parties to the action. State ex rel. Pfeiffer v. Red Carpet Inn, 2015-Ohio-4035, 42 N.E.3d
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- 20 Lavie v. Procter & Gamble Co., 105 Cal. App. 4th 496, 129 Cal. Rptr. 2d 486 (1st Dist. 2003).
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2028, 129 L. Ed. 2d 52 (1994).
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4 Am. Jur. 2d Amicus Curiae § 8

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

§ 8. Filing of amicus brief, arguing case, and introducing evidence; petitioning for certiorari

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  3

Forms

Forms relating to filing as amicus curiae, generally, see Federal Procedural Forms, Actions in District Court; Federal Procedural Forms, Appeal, Certiorari, and Review [\[Westlaw®\(r\) Search Query\]](#)

The amicus curiae may, with permission of the court, file briefs, argue the case, and introduce evidence.¹ However, the brief of an amicus curiae, or attachments thereto, cannot be used as a vehicle to present additional evidence or new evidence to an appellate court,² or to raise new facts.³ In addition, amicus briefs should not argue the facts in issue.⁴ The purpose of an amicus brief is to advise or make suggestions to the court,⁵ and to assist the court in resolving issues of law by explaining or amplifying the issues the parties raised.⁶ Thus, an appellate court will strike an amicus brief that simply restates arguments advanced by a party, providing no unique perspective or information to aid in resolving the appeal, and providing no insights into the merits of the case beyond those provided by the party.⁷ Since parties are limited as to the number and length of briefs, amicus briefs should not be used to simply give one side more exposure than the rules contemplate.⁸ In the interest of brevity, amicus briefs should not contain a statement of the case or facts, but rather should get right to the additional information which the amicus believes will assist the court.⁹ The courts are generally liberal in permitting an amicus curiae to file a brief in a pending case, particularly in a matter of public interest.¹⁰ It is a matter, however, which rests within the sound discretion of the court; and while consent will be given when the filing is justified by the circumstances, leave to file will be denied where there is no indication that the parties to the lawsuit and those persons who have already been granted permission to file an amicus brief will not adequately present all relevant legal arguments and it does not appear that the applicant is interested in any other case which

will be affected by the decision.¹¹ In some jurisdictions, although individual judges are generally prohibited from filing amicus briefs, they may, on a rare occasion and while exercising extreme caution, file such briefs in pending matters.¹² Moreover, a brief filed by the trial court may be treated as a brief amicus curiae in a direct appeal from a case the trial court has tried.¹³

Although courts have considered issues raised only in an amicus brief,¹⁴ ordinarily an amicus curiae will not be permitted to file a brief seeking to inject a new issue on appeal which was not before the trial court.¹⁵ Also, an amicus curiae will not be permitted to request relief if such relief is not requested by the parties.¹⁶ Similarly, an amicus curiae will not be permitted to present additional evidence on appeal which was not before the trial court¹⁷ or to petition for certiorari absent exceptional circumstances, such as improper denial of intervention in the court of appeals.¹⁸

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Footnotes

- 1 Concerned Area Residents for The Environment v. Southview Farm, 834 F. Supp. 1410 (W.D. N.Y. 1993); Gandee v. Glaser, 785 F. Supp. 684 (S.D. Ohio 1992), *aff'd*, 19 F.3d 1432 (6th Cir. 1994).
- 2 State v. Quantex Microsystems, Inc., 809 So. 2d 246 (La. Ct. App. 1st Cir. 2001).
- 3 Torres v. Seaboard Foods, LLC, 2016 OK 20, 373 P.3d 1057 (Okla. 2016), as corrected, (Mar. 4, 2016).
- 4 Ciba-Geigy Ltd. v. Fish Peddler, Inc., 683 So. 2d 522 (Fla. 4th DCA 1996).
- 5 City of Chicago v. City of Kankakee, 2017 IL App (1st) 153531, 417 Ill. Dec. 126, 87 N.E.3d 410 (App. Ct. 1st Dist. 2017), *appeal allowed*, 2018 WL 508150 (Ill. 2018).
- 6 U.S. v. Mullet, 868 F. Supp. 2d 618 (N.D. Ohio 2012).
- 7 Ryan v. Commodity Futures Trading Com'n, 125 F.3d 1062, 38 Fed. R. Serv. 3d 1064 (7th Cir. 1997); City of Chicago v. City of Kankakee, 2017 IL App (1st) 153531, 417 Ill. Dec. 126, 87 N.E.3d 410 (App. Ct. 1st Dist. 2017), *appeal allowed*, 2018 WL 508150 (Ill. 2018).
- 8 Ciba-Geigy Ltd. v. Fish Peddler, Inc., 683 So. 2d 522 (Fla. 4th DCA 1996); *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381, 813 N.E.2d 476 (2004).
- 9 Ciba-Geigy Ltd. v. Fish Peddler, Inc., 683 So. 2d 522 (Fla. 4th DCA 1996).
- 10 *In re Roxford Foods Litigation*, 790 F. Supp. 987 (E.D. Cal. 1991); *Concerned Jewish Youth v. McGuire*, 469 F. Supp. 1296 (S.D. N.Y. 1979), *decision aff'd*, 621 F.2d 471 (2d Cir. 1980).
- 11 Northern Securities Co. v. U.S., 191 U.S. 555, 24 S. Ct. 119, 48 L. Ed. 299 (1903); *American College of Obstetricians & Gynecologists, Pennsylvania Section v. Thornburgh*, 699 F.2d 644, 35 Fed. R. Serv. 2d 1257 (3d Cir. 1983); *U.S. v. Ahmed*, 788 F. Supp. 196 (S.D. N.Y. 1992), *order aff'd*, 980 F.2d 161 (2d Cir. 1992).
- 12 *In re Judicial Qualifications Commission Formal Advisory Opinion No. 241*, 301 Ga. 54, 799 S.E.2d 781 (2017).
- 13 *People v. Hundal*, 168 Cal. App. 4th 965, 86 Cal. Rptr. 3d 166 (3d Dist. 2008).
- 14 § 7.
- 15 *McCleskey v. Zant*, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991); *Pulaski County Special School District v. Lewis*, 2017 Ark. App. 264, 521 S.W.3d 142, 345 Ed. Law Rep. 1176 (2017); *City of Jackson v. Workers' Compensation Appeals Board*, 11 Cal. App. 5th 109, 216 Cal. Rptr. 3d 911 (3d Dist. 2017), *review denied*, (Aug. 9, 2017); *Harstad v. City of Woodbury*, 902 N.W.2d 64 (Minn. Ct. App. 2017), *review granted*, (Nov. 28, 2017).
- 16 *Vermilion Parish Police Jury v. Williams*, 824 So. 2d 466 (La. Ct. App. 3d Cir. 2002).
Portion of amicus curiae briefs filed in personal injury action that urged the supreme court to abandon fact pleading would be stricken, where no party in the case had argued for the elimination of fact pleading. *Karas v. Strevell*, 227 Ill. 2d 440, 318 Ill. Dec. 567, 884 N.E.2d 122, 75 A.L.R.6th 663 (2008).
- 17 *Wiggins Bros., Inc. v. Department of Energy*, 667 F.2d 77 (Temp. Emer. Ct. App. 1981).

18

International Union, United Auto., Aerospace and Agr. Implement Workers of America AFL-CIO, Local 283 v. Scofield, 382 U.S. 205, 86 S. Ct. 373, 15 L. Ed. 2d 272 (1965); New Mexico Chiropractors Ass'n v. Katz, 1980-NMSC-078, 94 N.M. 554, 613 P.2d 424 (1980).

End of Document

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4 Am. Jur. 2d Amicus Curiae § 9

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

§ 9. Filing of amicus brief in federal courts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  3

Forms

Forms relating to amicus curiae briefs, generally, see Federal Procedural Forms, Appeal, Certiorari, and Review
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By leave of the United States Supreme Court, counsel for an amicus curiae whose brief has been duly filed may, with a party's consent, argue orally on the side of that party.¹ In the absence of consent, counsel for an amicus curiae may orally argue only by leave of the court, on a motion particularly setting forth why such argument is thought to provide assistance to the court not otherwise available.² Such motions are granted only in the most extraordinary circumstances.³ A motion for leave to file a brief as amicus curiae must be prepared in booklet format as specified by rule⁴ and 40 copies must be filed.⁵ The motion must be served as specified by rule.⁶

The Federal Rules of Appellate Procedure provide different rules for amicus briefs, depending on whether the brief is filed during initial consideration of a case on the merits, or is filed during consideration of whether to grant a rehearing.⁷ During initial consideration of a case on the merits, the United States or its officer or agency or a state may file an amicus curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.⁸ A motion for leave to file an amicus brief must be accompanied by the proposed brief and state the movant's interest; and the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.⁹ The contents and form of the brief are prescribed.¹⁰ Except by permission of the

court, an amicus brief must not exceed a specific length.¹¹ An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than seven days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than seven days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.¹²

Observation:

The court of appeals has discretion to accept an untimely filing of an amicus brief in support of a petition for rehearing when the value of the potential amicus brief justifies the inconvenience of requiring the judges to review a case multiple times.¹³

An amicus curiae may not file a reply brief,¹⁴ or participate in oral argument,¹⁵ without the court's permission.

During consideration of whether to grant rehearing, the United States or its officer or agency or a state may file an amicus curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.¹⁶

Observation:

The rule governs unless a local rule or order in a case provides otherwise.¹⁷ A court remains free to adopt different rules governing whether amicus filings are permitted in connection with petitions for rehearing, and governing the procedures when such filings are permitted.¹⁸

A motion for leave to file an amicus brief must be accompanied by the proposed brief and state the movant's interest; and the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.¹⁹ The contents, form, and length of the brief are prescribed.²⁰ An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than seven days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.²¹

There is no right to file an amicus brief in the Court of Federal Claims; the decision whether to allow participation by amici curiae is left entirely to the discretion of the court.²²

Although there is no formal rule governing the filing of amicus curiae briefs, district courts possess the inherent authority to grant or refuse leave to amicus parties.²³

CUMULATIVE SUPPLEMENT

Cases:

Nonprofit civil liberties organization was entitled to leave to file amicus curiae brief in arrestee's action alleging that city police officers violated § 1983 by arresting him on an outstanding Immigration and Customs Enforcement (ICE) administrative warrant for removal when he called 911 regarding a trespasser on his property, where proposed brief was helpful, particularly on the changing nature of ICE warrants and authority of local officers to enforce them, which demonstrated that issues in the case had potential ramifications beyond the parties directly involved, and brief responded directly to defendants' contention that the legal authority was unclear on ability of local officers to act on ICE detainers. [Macareno v. Thomas](#), 378 F. Supp. 3d 933 (W.D. Wash. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S. Sup. Ct. R. 28\(7\), 37.](#)
- 2 [U.S. Sup. Ct. R. 28\(7\).](#)
- 3 [U.S. Sup. Ct. R. 28\(7\).](#)
- 4 [U.S. Sup. Ct. R. 33\(1\).](#)
- 5 [U.S. Sup. Ct. R. 21\(2\)\(b\).](#)
- 6 [U.S. Sup. Ct. R. 29.](#)
- 7 [Fed. R. App. P. 29\(a\)\(1\), \(b\)\(1\).](#)
- 8 [Fed. R. App. P. 29\(a\)\(2\).](#)
[Fed. R. App. P. 29\(a\)\(2\), as amended effective December 1, 2018, provides, additionally, that a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.](#)
- 9 [Fed. R. App. P. 29\(a\)\(3\).](#)
- 10 [Fed. R. App. P. 29\(a\)\(4\).](#)
- 11 [Fed. R. App. P. 29\(a\)\(5\).](#)
- 12 [Fed. R. App. P. 29\(a\)\(6\).](#)
A "principal brief" within meaning of rule requiring an amicus brief to be filed within seven days of the principal brief of the party being supported is the opening brief on the merits, as opposed to a reply brief or another variety of brief. [Fry v. Exelon Corp. Cash Balance Pension Plan](#), 576 F.3d 723 (7th Cir. 2009) (further holding that a petition for rehearing en banc is not a brief).
- 13 [Fry v. Exelon Corp. Cash Balance Pension Plan](#), 576 F.3d 723 (7th Cir. 2009).
- 14 [Fed. R. App. P. 29\(a\)\(7\).](#)
- 15 [Fed. R. App. P. 29\(a\)\(8\).](#)
- 16 [Fed. R. App. P. 29\(b\)\(2\).](#)
- 17 [Fed. R. App. P. 29\(b\)\(1\).](#)
- 18 [Fed. R. App. P. 29, Advisory Committee Notes to 2016 Amendments.](#)
- 19 [Fed. R. App. P. 29\(b\)\(3\), referring to Fed. R. App. P. 29\(a\)\(3\).](#)
- 20 [Fed. R. App. P. 29\(b\)\(4\).](#)
- 21 [Fed. R. App. P. 29\(b\)\(5\).](#)
- 22 [David H. v. United States](#), 135 Fed. Cl. 66 (2017).

23

Georgia Aquarium, Inc. v. Pritzker, 135 F. Supp. 3d 1280 (N.D. Ga. 2015); U.S. v. Yaroshenko, 86 F. Supp. 3d 289 (S.D. N.Y. 2015).

End of Document

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4 Am. Jur. 2d Amicus Curiae § 10

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

§ 10. Motion by amicus for dismissal of proceedings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  3

An amicus curiae ordinarily has no power to move for dismissal of a cause,¹ for by so doing, he assumes to act as attorney for the defendants, and not as a friend of the court.² But an attorney as amicus curiae may move to dismiss an action as collusive or fictitious. It is not only the right, but the duty, of an attorney of the court, if he knows or has reason to believe that the time of the court is being taken up by the trial of a fictitious issue, to inform the judge of it; and it is discretionary with the court to stay proceedings, make due inquiry, and, if the facts warrant the suggestion, dismiss the case.³

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Footnotes

- 1 [In re Petition to Call an Election on Question of Incorporating Village of Forest Knoll](#), 164 Ill. App. 3d 392, 115 Ill. Dec. 502, 517 N.E.2d 1188 (2d Dist. 1987).
- 2 [State v. McDonald](#), 63 Or. 467, 128 P. 835 (1912); [In re McClellan's Estate](#), 27 S.D. 109, 129 N.W. 1037 (1911).
- 3 [Lord v. Veazie](#), 49 U.S. 251, 8 How. 251, 12 L. Ed. 1067, 1850 WL 6839 (1850); [Muskogee Gas & Elec. Co. v. Haskell](#), 1913 OK 387, 38 Okla. 358, 132 P. 1098 (1913).

End of Document

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4 Am. Jur. 2d Amicus Curiae § 11

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

§ 11. Exception of amicus to court's ruling; application for rehearing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  3

An amicus curiae has no right to except to the rulings of the court; and if he takes such exceptions, they cannot avail on appeal.¹ He has no right to complain if the court refuses to accept his suggestions,² for it is not the function of an amicus curiae to take upon himself the management of a cause and assume the functions of an attorney at law.³ For the same reason, an amicus curiae is not ordinarily entitled to apply for a rehearing by a trial or an appellate court.⁴

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Footnotes

- 1 [City of Winter Haven v. Gillespie](#), 84 F.2d 285 (C.C.A. 5th Cir. 1936); [Skolnick v. State](#), 180 Ind. App. 253, 388 N.E.2d 1156 (1979).
- 2 [City of Winter Haven v. Gillespie](#), 84 F.2d 285 (C.C.A. 5th Cir. 1936); [State ex rel. Reichert v. Youngblood](#), 225 Ind. 129, 73 N.E.2d 174 (1947).
- 3 [§ 6](#).
- 4 [State ex rel. Blake v. Madison Circuit Court, Fiftieth Judicial Dist.](#), 244 Ind. 612, 195 N.E.2d 354 (1964); [City of New Orleans v. Liberty Shop](#), 157 La. 26, 101 So. 798, 40 A.L.R. 1136 (1924).

End of Document

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4 Am. Jur. 2d Amicus Curiae § 12

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae


Marie K. Pesando, J.D.

II. Rights and Powers of Amicus Curiae

§ 12. Compensation of amicus

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Amicus Curiae](#)  2

Ordinarily, an amicus curiae who participates in a proceeding by leave of court¹ or by court appointment is not entitled to compensation when he or she serves the interests of litigants, witnesses or any other private party.² An amicus curiae who participates in a proceeding by leave of court is generally not entitled to compensation because he or she is not a party, but is volunteering assistance which was not requested by the court.³ An amicus curiae appointed to aid and assist the court for the purpose of vindicating the court's honor is not entitled to compensation because in such cases the attorney is acting as an officer of the court.⁴ However, where the court appoints an amicus curiae who renders services which prove beneficial to a resolution of the questions presented, the court may properly award compensation and direct it to be paid by the party responsible for the situation which prompted the court to make the appointment.⁵ An amicus curiae may recover fees as a prevailing party where the amicus curiae is vitally interested in the issues involved in the action, and its participation is the same as if it had formally intervened in the action.⁶

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Footnotes

- 1 [Morales v. Turman](#), 820 F.2d 728 (5th Cir. 1987); [Miller-Wohl Co., Inc. v. Commissioner of Labor and Industry State of Mont.](#), 694 F.2d 203 (9th Cir. 1982).
As to a discussion of participation by amicus curiae by leave of court, see [§ 3](#).
- 2 [Fiorito v. Jones](#), 72 Ill. 2d 73, 18 Ill. Dec. 383, 377 N.E.2d 1019 (1978) (abrogated on other grounds by, [Brundidge v. Glendale Federal Bank, F.S.B.](#), 168 Ill. 2d 235, 213 Ill. Dec. 563, 659 N.E.2d 909 (1995)); [Ferguson v. Paycheck](#), 672 S.W.2d 746 (Tenn. 1984).
As to a discussion of participation by amicus curiae upon court appointment, see [§ 2](#).
- 3 [Morales v. Turman](#), 820 F.2d 728 (5th Cir. 1987); [Miller-Wohl Co., Inc. v. Commissioner of Labor and Industry State of Mont.](#), 694 F.2d 203 (9th Cir. 1982).

- 4 McCoy v. Briegel, 305 S.W.2d 29 (Mo. Ct. App. 1957); In re Phi Fathers Educational Ass'n, 239 Mo. App. 1105, 203 S.W.2d 885 (1947).
- 5 Morales v. Turman, 820 F.2d 728 (5th Cir. 1987); Miller-Wohl Co., Inc. v. Commissioner of Labor and Industry State of Mont., 694 F.2d 203 (9th Cir. 1982).
- 6 Russell v. Board of Plumbing Examiners of County of Westchester, 74 F. Supp. 2d 349, 45 Fed. R. Serv. 3d 624 (S.D. N.Y. 1999), *aff'd*, 1 Fed. Appx. 38 (2d Cir. 2001).

End of Document

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4 Am. Jur. 2d Amicus Curiae Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Amicus Curiae

Marie K. Pesando, J.D.

[Topic Summary](#)

Correlation Table

Amicus Curiae

2007	2018
1	§ 1
2	§ 2
3	§ 3
4	§ 4
5	§ 5
6	§ 3
6	§ 6
7	§ 7
8	§ 8
9	§ 9
10	§ 10
11	§ 11
12	§ 12

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